COPY

2003 OCT 31 AM 10:18

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MAX ROTHAL	)	**CASE NO.: CV 2002 05 2862**
	)	
Plaintiff	)	**JUDGE JAMES R. WILLIAMS**
	)	
vs.	)	
	)	
RAYMOND THROWER	)	**ORDER**
	)	**(final appealable)**
Defendant	)	

On May 20, 2002, Plaintiff Max Rothal, as the Law Director for the City of Akron, filed a Vexatious Litigator Complaint, pursuant to R.C. 2323.52, against Defendant Raymond Thrower.

On May 24, 2002, the Plaintiff served the Defendant Requests for Admission that required a response within twenty-eight days.

On June 13, 2002, the Defendant filed a response to the complaint that this Court characterizes as an answer and three counterclaims. The Defendant, additionally, included in the caption of his response a "Motion to Dismiss Per Civ R 12 (B)(6)." Due to the fact Defendant did not present any motion or argument in support of his motion to dismiss, the Court interprets this as preserving the defense for trial purposes, not as a pending motion before the Court. Finally, Defendant requested a stay of discovery within his response.

COPY

On June 24, 2002, the Plaintiff filed a Motion to Dismiss Defendant's counterclaims, a Motion to Strike Defendant's Answer and a Motion opposing Defendant's request for a stay of discovery.

On July 2, 2002, the Plaintiff filed a Motion for Summary Judgment in its favor, supporting its motion primarily with facts admitted by Defendant through his wholesale failure to respond to Plaintiff's Requests for Admission.

As a procedural matter, "when a trial court fails to rule upon a motion, it will be presumed that it was overruled." Georgeoff v. O'brien (1995), 105 Ohio App.3d 373, 378.

"Any matter admitted under Civ.R. 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Cleveland Trust Company v. Willis (1985), 20 Ohio St.3d 66, 67. In the present case, the Defendant requested a stay of discovery in his initial response to the Complaint. This Court did not rule on said motion before discovery answers were due, thus, Defendant should have presumed the motion was overruled.

A response to the requests for admission was required on June 24, 2002. Defendant failed to respond to such requests, and in fact, has not responded to such requests as of October 8, 2002. On July 2, 2002 the Plaintiff filed a Motion for Summary Judgment based on the default admissions. "A party's failure to timely respond to requests for admission results in default admissions." Cleveland Trust Company, at 67; see also National City Bank v. Moore (March 1, 2000), Summit App. No. 19465. "A request for admission can be used to establish a fact, even if it goes to the heart of the case." Cleveland Trust Company, at 67.

On July 8, 2002, the Defendant moved for a protective order and a motion for leave to file responses. Extensions of time are often "granted on a showing of good cause if timely made under the Civil Rules." Cleveland Trust Company, at 67. Defendant's untimely request was

improper as the Admissions were deemed admitted upon his failure to answer on June 24, 2002. The only proper remedy would have been a Motion to Withdraw or Amend the Admissions. Defendant failed to request either. Accordingly, the Court adopts the facts admitted by Defendant as findings of fact for purposes of ruling on pending dispositive motions.

After careful consideration, the Court makes the following specific findings of facts and conclusions of law:

Plaintiff, Max Rothal, is the Law Director for the City of Akron, and the proper entity to file this case.

On April 4, 1997, the Defendant Raymond Thrower pled no contest in the Akron Municipal Court, and was found guilty of violating two counts of Chapter 150 of the Akron Housing Code in Case Number 97 CRB 1007. Pursuant to Section 150.40(A)(2) of the Housing Code, the Defendant was then required to obtain semi-annual inspections of his rental properties due to his prior criminal conviction.

Subsequent to his conviction, Defendant Raymond Thrower filed the following pro se civil actions in the Summit County Court of Common Pleas against the City of Akron challenging Section 150.40 of the Akron Housing Code: CV 2000 04 1748; CV 2000 12 5679; CV 2000 12 5680; CV 2001 03 1265; CV 2001 08 3844; and CV 2001 12 6233.

The aforementioned cases are currently pending or have been resolved within one year of the filing of Plaintiff's Complaint.

In case number CV 2000 04 1748, Defendant challenged the imposition of inspection fees and fines using the following arguments: the inspection fees violated his plea agreement in case number 97 CRB 1007; Defendant is entitled to specific performance of his plea agreement in case number 97 CRB 1007; the imposition of fines and inspection fees

violated the double jeopardy clause, the ex post facto clause, the equal protection clause, the due process of law, and substantive due process; the imposition of fines was cruel and unusual punishment; the imposition of fines and inspection fees violated the takings clause; and the Housing Appeals Board retaliated against Defendant.

In case number CV 2000 04 1748, Defendant agrees by admission that he attached cartoons and caricatures to his brief in order to harass local officials for incarcerating his brother Al Thrower.

In case number CV 2000 04 1748, Judge Schneiderman determined that Defendant's arguments lacked merit and ruled in favor of the City of Akron. The Ninth District Court of Appeals affirmed Judge Schneiderman's decision.

In case number CV 2000 12 5679, Defendant challenged the imposition of inspection fees and fines using the following arguments: the City of Akron retaliated against him, and the Order to Comply violated his due process and equal protection rights. Judge Spicer determined that Defendant's arguments lacked merit and ruled in favor of the City of Akron.

In case number CV 2000 12 5680, Defendant challenged the imposition of inspection fees and fines using the following arguments: the City of Akron retaliated against him, and the Order to Comply violated his due process and equal protection rights. Judge Adams ruled in the City's favor. Judge Adams held that Defendant filed case number CV 2000 12 5680 as a delay tactic and Defendant has agreed by admission.

In case number CV 2001 03 1265, Defendant challenged the imposition of inspection fees and fines using the following argument: the Housing Appeals Board and the trial court were divested of jurisdiction to hear the case because Defendant had two appeals pending. Judge Spicer found this argument to be frivolous and ruled in favor of the City of Akron.

In case number CV 2001 08 3844, Defendant challenged the imposition of inspection fees and fines using the following arguments: the Housing Appeals Board was divested of jurisdiction to hear the case because Defendant had two appeals pending at the time, and the imposition of the inspection fees violated his criminal plea agreement in case number 97 CRB 1007. The case was pending before Judge Unruh at the time Plaintiff filed this action sub judice.

In case number CV 01 12 6233, Defendant challenged the imposition of inspection fees and fines using the following arguments: the Housing Appeals Board was divested of jurisdiction to enforce Section 150.40 of the Akron Housing Code because Defendant had two appeals pending on the same issue, and the inspection fees and fines violated his criminal plea agreement in case number 97 CRB 1007. The case was pending before Judge Adams at the time Plaintiff filed this action sub judice.

Defendant has raised identical arguments in the six pro se civil actions he filed against the City of Akron, despite the courts' previous findings that said arguments have lacked merit, were dilatory, and frivolous.

Defendant did not seek an extension, modification, or reversal of existing law in the six civil actions he filed against the City of Akron.

Defendant repeatedly raised the same arguments in the six actions against the City of Akron without providing supporting evidence.

Although Defendant admits to understanding the law regarding Chapter 150 of the Housing Code, he continually filed actions against the City of Akron because he disagrees with the current status of the law.

STATEMENT OF THE LAW

Summary judgment is appropriate when: 1) there is no genuine issue as to any material fact; 2) the moving party is entitled to judgment as a matter of law; and 3) reasonable minds can reach but one conclusion which is adverse to the party against whom the motion is made, with the evidence construed most strongly in favor of the non-moving party. Holliman v. Allstate Ins. Co. (1999), 86 Ohio St.3d 414. Civ.R. 56 places upon the moving party the initial burden of setting forth specific facts that demonstrate no issue of material fact exists and the moving party is entitled to judgment as a matter of law. Dresher v. Burt (1996), 75 Ohio St.3d 280, 292-293. If the movant satisfies this burden, summary judgment will be appropriate if the nonmovant fails to establish the existence of a genuine issue of material fact. Id.

Defendant's "unanswered requests for admission rendered the matters requested conclusively established for the purpose of the suit * * * and could support a motion for summary judgment as written admissions under Civ.R. 56(C)." National City Bank, at 4. Although Defendant acted pro se in the numerous actions he filed against the City of Akron, and is currently acting pro se in the case before this court, pro se litigants are presumed to know the applicable law and procedures. Jones Concrete, Inc. v. Thomas (Dec. 22, 1999), Medina App. No 2957-M. A pro se litigant is afforded no greater privileges than other litigants. Id.

R.C. 2323.52(A)(3) defines a "vexatious litigator" as "any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions." This statute applies to an action or actions in the court of claims, court of common pleas, county court, or municipal court. R.C. 2323.52(A)(3). For purposes of the statute, "conduct" means the filing of a civil action; the assertion of a claim or defense in a civil action;

or any other action taken in connection with a civil action. R.C. 2323.51(A)(1)(a); R.C. 2323.52(A)(1).

Pursuant to R.C. 2323.52(A)(2), "vexatious conduct" means conduct in a civil action that meets any of the following:

> "(a) the conduct obviously serves merely to harass or maliciously injure another party to the civil action; (b) the conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law; or (c) the conduct is imposed solely for delay."

R.C. 2323.52(A)(2). In declaring R.C. 2323.52 constitutional in its entirety, the Supreme Court of Ohio found that the purpose of the statute is to prevent abuse of the system by vexatious litigators who waste judicial resources, "unnecessarily encroach on judicial machinery needed by others for the vindication of legitimate rights," and seek "to intimidate public officials and employees or cause the emotional and financial decimation of their targets." Mayer v. Bristow (2000), 91 Ohio St.3d 3, 13.

In recognizing the facts established in this case, this Court finds that there are no genuine issues of material fact and the Plaintiff, Max Rothal, Law Director for the City of Akron, is entitled to summary judgment as a matter of law because reasonable minds can reach but one conclusion which is adverse to the Defendant when construing the evidence most strongly in Defendant's favor.

Defendant's six pro se civil actions against the City of Akron in the Summit County Court of Common Pleas constitute vexatious conduct. This vexatious conduct when viewed together was habitual, persistent and without reasonable grounds. This court finds that Defendant is a vexatious litigator, pursuant to R.C. 2323.52, as a matter of law.

COPY

IT IS ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's Motion to Dismiss Defendant's counterclaims is granted. The remainder of the pending Motions not ruled upon in this order are hereby moot.

IT IS FURTHER ORDERED that Defendant is prohibited from doing the following without first obtaining leave from this Court to proceed:

(1) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(2) Continuing any legal proceedings that the vexatious litigator had instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of this order; and

(3) Making any application, other than an application for leave to proceed, in any legal proceedings instituted by Ray Thrower in the court of claims or in a court of common pleas, municipal court, or county court.

IT IS FURTHER ORDERED that the Clerk of the Summit County Common Pleas Court send a certified copy of this order to the Supreme Court of Ohio for publication in a manner that the Supreme Court determines is appropriate.

FINALLY, IT IS ORDERED that the cost of this action be paid by the Defendant.

This is a final appealable order. There is no just cause for delay.

IT IS SO ORDERED.

JUDGE JAMES R. WILLIAMS

I certify this to be a true copy of the original
Diana Zaleski, Clerk of Courts

8

Deputy

COPY

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this Judgment and its date of entry upon the journal.

JUDGE JAMES R. WILLIAMS

cc: Defendant Raymond Thrower
Attorney Michael J. Defibaugh